

REMARKS

The Office Action dated December 29, 2005 has been carefully considered. In the Office Action the patent Examiner raised an election of species requirement between the pivot joint feature such as in claim 1 and the biasing spring feature as in claims 13 and 25 and indicated that claim 34 is generic to both of these different features. The election of species requirement raised in the Office Action is herewith traversed, but an election is made pursuant to the Office Action.

As a preliminary matter, it is noted that there is only one embodiment illustrated in the figures of the present patent application and the pivot joint and biasing spring features are really two different operational features of the overall illustrated embodiment. Accordingly, the election of species requirement appears to be in error considering that MPEP 806.04 suggests that elections of species requirements are only applicable when there are different embodiments. Indeed, see MPEP 806.04(e) which states that "Claims are definitions of inventions. Claims are never species." (compare the Office Action statement that "this application contains claims directed to the following patentably distinct species of the claimed invention: Cl. 1 has a pivot joint, Cls. 13 and 25 have a biasing spring." (At page 2, paragraph 1.) Also, MPEP 806.04(e) further states that "species are always the specifically different embodiments." Considering that only one embodiment is illustrated in the figures, it is believed that the election of species requirement should be withdrawn.

It is further submitted that it would not impose an undue burden on the patent Examiner to examine all of the claims together considering that the claims are all directed toward a removeable surface positioning guide for a rotary hand-held tool and thus the search and examination should be relatively focused.

Nevertheless, as required in the Office Action, the Applicant hereby elects to prosecute the pivot joint feature and species of the present invention as identified in claim 1. The claims which are indicated in the Office Action to be generic and/or are directed toward the pivot joint feature (and without being directed toward the spring biasing or plunging feature) are the following claims: claims 1-4, 8-12, 34-38, and 40.¹

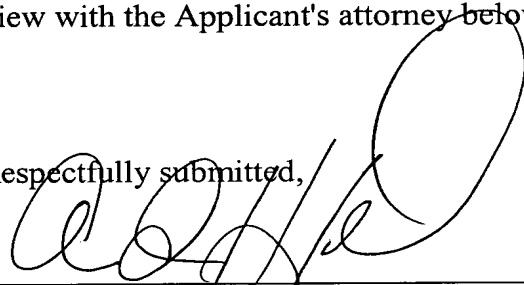
¹ The claims directed toward at least in part the plunging or spring biasing feature then are claims 5-7, 13-33 and 39.

In re Appln. Of: Edward Adkins et al.
Application No.: 10/825,708

As the election requirement is respectfully traversed, it is respectfully submitted that the election requirement be withdrawn and claims 1-40 be examined.

Applicant hopes that favorable examination is received and that all claims will be examined together and allowed upon examination of the prior art. Applicant believes it has complied with all of its duties as indicated in the Office Action and should any additional questions arise, a telephone interview with the Applicant's attorney below is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. J. Heinisch', written over a horizontal line.

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